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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT MITCHELL,
Plaintiff,
v.
TOM FELKER, et al.,
Defendants.

No. 08-CV-01196 JAM EFB

**DECLARATION OF DEVIN M.
MCDONELL IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND MOTION FOR
PRELIMINARY INJUNCTION**

1 I, Devin M. McDonell, declare as follows

2 1. I am an attorney licensed to practice law in the State of California and admitted to
3 practice law before this Court. I make this declaration of my personal knowledge and, if called
4 as a witness, I could and would completely testify to the matters stated herein. I am employed by
5 Bingham McCutchen, and I am a member of Bingham McCutchen's legal team serving as
6 counsel for Plaintiffs in the above captioned matter. I have directed and supervised my office
7 staff in compiling summary data showing all the lockdowns that occurred in California
8 Department of Corrections and Rehabilitation ("CDCR") prisons since January 1, 2010 regarding
9 which the CDCR has provided Plaintiffs documents.

10 2. Attached hereto as Exhibit A is a summary spreadsheet prepared by me and under
11 my supervision entitled "FRE 1006 Summary of 2010-2011 Program Status Reports Provided to
12 Plaintiffs in Response to Public Records Act Requests and Discovery Requests." (hereinafter
13 "PSR Summary Spreadsheet 2010-2011"). Exhibit A summarizes all the lockdowns in CDCR
14 prisons that were in effect between January 1, 2010 and June 1, 2010, and initiated prior to June
15 1, 2011, regarding which the CDCR has provided Plaintiffs documentation.

16 3. The column entitled "Security" in the PSR Summary Spreadsheet 2010-2011
17 shows that there were a total of 635 security-based lockdowns in CDCR prisons during this
18 period. This category includes lockdowns initiated because of fights, riots, threats of violence,
19 etc. It excludes lockdowns initiated because of staff shortages, and lockdowns caused by
20 medical emergencies (such as quarantines).

21 4. The column entitled "Race" in the PSR Summary Spreadsheet 2010-2011 shows
22 that there were a total of 339 race-based lockdowns during this period. By "race-based," I mean
23 that the lockdown was imposed upon inmates as identified by the CDCR by their shared ethnic
24 or racial characteristics. Race-based lockdowns listed one or more of the terms "White,"
25 "Black," "Hispanic," or "Other" in the "Inmates Affected" column of the Program Status Report:
26 Part B-Plan of Operation / Staff & Inmate Notification forms ("PSR"). Where the "Inmates
27 Affected" column applied to a named gang--e.g. "Black Crips"-- but not to one of the four
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classifications above, the lockdown was not labeled as race-based.

5. The column entitled “Recreation” in the PSR Summary Spreadsheet 2010-2011 shows the number of lockdowns during with outdoor recreation was withheld or otherwise restricted.

6. The column entitled “length of lockdown” shows the total number of lockdowns that fit within each range of days. Each column in this section is exclusive of the others.

7. The final column is entitled “Inmates Affected: Race/Ethnicity.” This column shows the number of lockdowns that affected inmates identified by each racial or ethnic group. These columns are not exclusive of one another; lockdowns that affected more than one race are listed once for each affected race.

8. Attached hereto as Exhibit B is a summary spreadsheet prepared by me and under my supervision entitled “FRE 1006 Summary of 2011-2012 Program Status Reports Provided to Plaintiffs in Response to Public Records Act Requests and Discovery Requests.” (hereinafter “PSR Summary Spreadsheet 2011-2012”). Exhibit B summarizes all the lockdowns in CDCR prisons that were initiated on or after June 1, 2011 regarding which the CDCR has provided Plaintiffs documentation. This spreadsheet does not include PSRs provided to Plaintiffs after October, 2012.

9. The columns in PSR Summary Spreadsheet 2011-2012 represent the same categories of lockdowns as in the PSR Summary Spreadsheet 2010-2011. Exhibit B shows that between June 1, 2011 and November 1, 2012, the CDCR initiated 810 lockdowns, of which 322 affected inmates based on their race or ethnicity.

Source Documents

10. Defendants produced to Plaintiffs copies of thousands of CDCR PSRs in effect between January 1, 2010 and November, 2012 either in response to discovery requests or to Plaintiffs’ two requests for public records pursuant to the California Public Records Act, California Government Code Section 6250 et seq. (“Public Records Act”). The PSR Summary Spreadsheets contain information from the PSRs Defendants produced to Plaintiffs and other

documents with information about the lockdowns described in these PSRs.

11. Plaintiffs' first request under the Public Records Act was submitted by the Prison Law Office on June 2, 2011 and sought "copies of all parts of all daily Program Status Reports and weekly spreadsheet data regarding each lockdown, modified program or state of emergency that occurred at a prison under the jurisdiction of CDCR between July 1, 2010 and June 1, 2011." (hereinafter "First Request"). A true and correct copy of this First Request is attached hereto as Exhibit C, as provided to me by the Prison Law Office.

12. Plaintiffs' second Public Records Act request was drafted by me and sent to the CDCR on August 6, 2012 requesting "Program Status Reports ("PSRs") and weekly spreadsheet data regarding all lockdowns, modified programs, or states of emergency which occurred between June 2, 2011, and August 3, 2012 at CDCR facilities." (hereinafter "Second Request"). A true and correct copy of this Second Request is attached hereto as Exhibit D.

13. Plaintiffs received documents responsive to the First Request, as described in ¶ 11, on July 20, 2011, as provided in CDCR's July 19, 2011 letter to Rebekah Evenson of the Prison Law Office, attached hereto as Exhibit E. Plaintiffs received documents responsive to the Second Request, as described in ¶ 12, on October 8, 2012.

14. In response to the Public Records Act requests described in ¶¶ 11 and 12, CDCR provided Plaintiffs with over 6,000 PSRs. Each PSR provided information about specific lockdowns or modified programs as those terms are defined in 15. C.C.R. § 3000 (2012) (collectively "Modified Programs") and contained information relevant to the CDCR's practice of instituting Modified Programs based on racial or ethnic classifications and denying or restricting recreational activity. This large number of PSRs produced, and the vast amount of information contained in each PSR, made it impossible to comprehend the information contained therein merely by reviewing each PSR individually.

15. In response to Plaintiffs' Requests for Production (Set 1), dated August 28, 2012, the CDCR provided Plaintiffs with thousands of pages of documents describing and relating to Modified Programs imposed at CDCR facilities. These documents included thousands of PSRs,

1 some of which were duplicative of the PSRs provided in response to Plaintiffs' Public Records
2 Act requests, and some of which had not previously been provided to Plaintiffs (hereinafter
3 "Discovery PSRs").

4 16. I directed, supervised the preparation of, and performed quality control upon
5 review of the 6,000+ PSRs described in ¶ 14 and the Discovery PSRs described in ¶ 15 by
6 Bingham paralegals and a Bingham litigation technology specialist. I instructed the team of
7 paralegals to code all PSRs with a "Yes" or "No" as to whether the reason stated for the PSR was
8 related to security within the facility. I instructed paralegals to code the PSR "Yes" for all PSRs
9 with a potential security rationale for the modified program. I instructed the paralegals to code
10 the PSR with a "No" for PSRs whose stated reason indicated the PSR was initiated for reasons
11 which appeared unrelated to preventing violence involving inmates (e.g. for immunizations or to
12 quarantine inmates in order to protect against potential outbreaks of disease). All PSRs coded
13 with a "Yes" pursuant to the instructions in this ¶ 16 are referred to hereinafter as "Security-
14 Based PSRs."

15 17. PSR Summary Spreadsheet 2010-2011 summarizes information contained in
16 Security-Based PSRs imposed on CDCR inmates between January 1, 2010 and June 1, 2011.
17 The PSRs Summarized in PSR Summary Spreadsheet 2010-2011 were provided to Plaintiffs by
18 the CDCR either in response to Plaintiffs' June 2, 2011 Public Records Act request described in
19 ¶ 11, or in response to Plaintiffs' Requests for Production (Set 1), dated August 28, 2012. I
20 generated a complete list of the Modified Programs included in PSR Summary Spreadsheet
21 2010-2011, and a complete and correct copy of this list is attached as Exhibit F.

22 18. PSR Summary Spreadsheet 2011-2012 summarizes information contained in
23 Security-Based PSRs imposed on CDCR inmates after June 1, 2011. The PSRs Summarized in
24 PSR Summary Spreadsheet 2011-2012 were provided to Plaintiffs by the CDCR either in
25 response to Plaintiffs' August 6, 2012 Public Records Act request described in ¶ 12, or in
26 response to Plaintiffs' Requests for Production (Set 1), dated August 28, 2012. I generated a
27 complete list of the PSR Numbers included in the PSR Summary Spreadsheet 2011-2012, and a
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complete and correct copy of this list is attached as Exhibit G.

Process of Compiling Summary Data

19. In order to effectively analyze the Security-Based PSRs provided to Plaintiffs in response to Public Records Act and discovery requests, I directed, supervised the preparation of, and performed quality control regarding a process which accurately coded Security-Based PSRs in a Concordance database, pulled data from that database into Microsoft Excel spreadsheets, and then presented the data in tabular form as seen in Exhibit A and Exhibit B. By creating these Exhibits, Plaintiffs' counsel could determine for each CDCR institution, and across the CDCR system as a whole:

- a) the total number of Modified Programs represented in the documents provided by the CDCR in response to Plaintiffs' Public Records Act and discovery requests,
- b) the length of time these Modified Programs were in effect,
- c) the number of Modified Programs which denied access to or otherwise restricted recreational activities, and the length of time inmates subject to a given Modified Program were either denied recreational activities or allowed only restricted recreational activities,
- d) the number of Modified Programs which applied to one or more racial or ethnic classifications, and
- e) the number of Modified Programs which applied to specific racial or ethnic classifications.

20. In order to pull information from the Security-Based PSRs into a form which could be analyzed using a spreadsheet, it was necessary to code the Security-Based PSRs provided by the CDCR. I directed, supervised the preparation of, and performed quality control upon the coding of all PSRs received from the CDCR in response to Plaintiffs' Public Records Act and discovery requests in a Concordance database. This coding was done by paralegals under my supervision. Initially, my team coded the PSRs received in response to the Public

Records Act requests. This information was then supplemented with information contained in the Discovery PSRs. All Security-Based PSRs received from the CDCR were coded to capture the following information from each PSR:

- a) The date of the Modified Program discussed in the PSR
- b) The Institution and Facility to which the Modified Program discussed in the PSR applied
- c) The reason for the Modified Program discussed in the PSR, as indicated by the CDCR
- d) The CDCR's label of the PSR as Initial, Update, or Closure
- e) Whether the Modified Program discussed in the PSR included limitations on recreation
- f) The racial, ethnic, gang, disruptive group, or other category(ies) of persons to whom the Modified Program discussed in the PSR applied, as indicated in the Inmates Affected portion of the PSR
- g) All comments recorded in the "Remarks" section of the PSR


21. I directed, supervised the preparation of, and performed quality control upon actions taken by paralegals and the litigation technology specialist to prepare the data described in ¶¶ 19 and 20 so that summary tables of all Security-Based PSRs provided by the CDCR to Plaintiffs could be created. For each series of Security-Based PSRs identified with the same PSR number, paralegals created a summary row which accurately reflects information contained in all PSRs sharing the same PSR number. These "Summary Rows" accurately:

- a) Indicate whether PSRs within the Modified Program applied to any racial or ethnic classifications, and identified those racial or ethnic classifications, at any time during the Modified Program.
- b) Indicate whether the Modified Program denied or restricted recreational activity at any time during the Modified Program.
- c) Indicate the start date and an end date of each Modified Program where

possible. The start date was assigned using the earlier of the earliest effective date of the any PSR within a Modified Program, or the starting date of the Modified Program as indicated by documents referencing the same PSR number. The end date was assigned based on the date of the "closure" PSR where possible, or the closure dates as indicated by documents referencing the same PSR number. Paralegals and I used these dates to calculate the length of each Modified Program and recorded these periods in a spreadsheet.

22. I worked with a litigation technology specialist to create the PSR Summary Spreadsheets which accurately count the number of Modified Programs which meet the criteria indicated in each of the heading columns in Exhibit A and Exhibit B. Based on my supervision of and participation in designing, creating, and performing quality control on the process resulting in the creation of Exhibit A and Exhibit B, these Exhibits provide accurate summaries of information contained in the Discovery PSRs and the PSRs provided to Plaintiffs in response to Plaintiffs' Public Records Act requests described in ¶¶ 14 and 15, and in response to discovery requests.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on March 4, 2013.

By: 
Devin McDonell